

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6817

Joint Petition of Central Vermont Public Service)
Corporation (CVPS) and Agri-Mark, Inc. for a)
certificate of public good authorizing the)
construction by Agri-Mark, Inc. of a substation)
at its manufacturing facility located in)
Middlebury, Vermont, and the construction by)
CVPS of approximately 2,000 feet of 46 kV)
transmission line to provide service to Agri-)
Mark's proposed substation)

Order entered: 5/29/2003

I. INTRODUCTION

This case involves a joint petition filed on February 3, 2003, an amended petition filed on March 11, 2003, plus supplemental testimony and exhibits filed on April 14, 2003, by Central Vermont Public Service Corporation ("CVPS") and Agri-Mark, Inc. ("Agri-Mark") requesting a certificate of public good ("CPG") under 30 V.S.A. § 248(j). Agri-Mark seeks to construct a 46 kV/12.5 kV substation and CVPS seeks to construct approximately 2000 feet of 46 kV transmission line to provide service to the Agri-Mark substation, all located in the Town of Middlebury, Vermont.

CVPS has served the petition, prefiled testimony, proposed findings, and a proposed order (along with a prospective CPG) on the Public Service Board ("Board"), the Vermont Department of Public Service ("DPS") and the Vermont Agency of Natural Resources ("ANR"), as specified in 30 V.S.A. § 248(a)(4)(C), pursuant to the requirements of 30 V.S.A. § 248(j)(2).

Notice of the filing in this docket was sent on March 21, 2003, to all parties specified in 30 V.S.A. § 248(a)(4)(C) and all other interested persons. The notice stated that any party wishing to submit comments as to whether the petition raises a significant issue with respect to

the substantive criteria of 30 V.S.A. § 248 must file the comments with the Board on or before April 24, 2003. Notice of the filing, with a request for comments on or before April 24, 2003, was also published in the *Addison County Independent* on March 27 and April 3, 2003.

The ANR filed comments with the Board on April 18, 2003. The ANR does not oppose the filing and does not request a hearing. In its filing, the ANR requests that stone check dams be used for erosion control inside the drainage swale, as opposed to the silt fencing and hay bale method proposed by CVPS. No comment or objection to the ANR request has been received from CVPS.

The DPS filed comments with the Board on April 9, 2003. The DPS has no objection to granting the requested CPG without a hearing. The DPS recommends that the CPG issued to Agri-Mark be recorded in the land records in the Town of Middlebury, where the proposed substation will be located.

The DPS filed a Determination under 30 V.S.A. § 202(f) on April 9, 2003.

No comments were received from any other parties or interested persons.

The Board has reviewed the petition and accompanying documents and agrees that, pursuant to 30 V.S.A. § 248(j), a CPG should be issued without the notice and hearings otherwise required by 30 V.S.A. § 248.

II. FINDINGS

Based upon the petitions and accompanying documents, the Board hereby makes the following findings in this matter.

1. CVPS is a duly organized public service corporation with a principal place of business at 77 Grove Street, Rutland, Vermont. Pet. at 1.
2. CVPS owns and operates electrical distribution and transmission systems in the Town of Middlebury. Pet. at 1
3. Agri-Mark owns and operates a manufacturing facility in Middlebury, Vermont. As a result of a planned expansion to its existing manufacturing plant, Agri-Mark wishes to take electric service from the CVPS transmission system to reduce Agri-Mark's operating costs and to avoid electric service constraints on the CVPS distribution system. Crocket pf. at 1-4; Watts pf. at 1; exh. TOU-3.

4. To provide the transmission service to Agri-Mark, CVPS is proposing to construct approximately 2,000 feet of 46 kV transmission line to a proposed 46 kV/12.5 kV substation to be constructed adjacent to the Agri-Mark manufacturing facility. The proposed 46 kV/12.5 kV substation is to be constructed by Agri-Mark. Watts pf. at 1; Crocket pf. at 1-2; Upton pf. at 1-2.

5. CVPS proposes to utilize an existing distribution corridor in the Middlebury Industrial Park to construct the proposed new 46kV transmission line from an existing CVPS 46 kV transmission line to the Agri-Mark property. Watts pf. at pages 1-2.

Orderly Development of the Region

[30 V.S.A. § 248(b)(1)]

6. The proposed project will not unduly interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. This finding is supported by findings 7 and 8, below.

7. The proposed project fulfills a request made by an existing industrial customer (Agri-Mark) located within the Middlebury Industrial Park, an area designated by the Town of Middlebury as appropriate for industrial development that require special power needs. Upton pf. at 1-2.

8. The proposed project will not impact any land conservation measures included in the Middlebury Town Plan. Representatives of the Middlebury Planning Commission, the Middlebury Selectboard, and the Addison County Regional Planning Commission reviewed the proposed project. Each agency expressed support for the proposed project. Upton pf. at 1-3; exh. TOU-3.

Need For Present and Future Demand for Service

[30 V.S.A. § 248(b)(2)]

9. The proposed project is required to meet the need for present and future demand for service which could not otherwise be provided in a more cost effective manner through energy conservation programs and measures and energy efficiency and load management measures. This finding is supported by findings 3 and 4, above, and finding 10, below.

10. The Agri-Mark facility in Middlebury has a peak demand currently at 2700 kW. Expansion plans for this facility will result in the peak demand exceeding 3042 kW, which is the limit at which CVPS can provide reliable service from its existing 12.5 kV distribution system. As a result, the proposed change to transmission service, which is required to allow Agri Mark to take advantage of the cost savings to such service, will avoid these distribution service constraints. Crocket pf. at 2.

System Stability and Reliability

[30 V.S.A. § 248(b)(3)]

11. The proposed project will have no affect on system stability or reliability. Watts pf. at 2.

Economic Benefit to the State

[30 V.S.A. § 248(b)(4)]

12. The proposed project will result in an economic benefit to the State. This finding is supported by finding 3 above and 13-15, below.

13. The total construction cost for the proposed project is estimated to be \$238,000, all of which will be paid by Agri-Mark. Watts pf. at 2.

14. The proposed project benefits CVPS's customers because it will allow Agri-Mark to reduce its power costs and avoid expected burdens on the existing CVPS 12.5 kV distribution system, as a result of the planned expansion at the Agri-Mark plant. Agri-Mark projects a savings of \$190,000 per year in electricity costs. In addition, Agri-Mark will utilize, based upon analysis, the most cost-effective transformer size in the proposed substation. Crocket pf. at 2-3.

15. The proposed project benefits the Town of Middlebury by supporting local efforts to provide industrial infrastructure in the existing Middlebury Industrial Park, as provided in Middlebury's municipal plan and land use policies. Upton pf. at 1-3.

**Aesthetics, Historic Sites, Air and
Water Purity, the Natural Environment and Public**

Health and Safety

[30 V.S.A. § 248(b)(5)]

16. The project as proposed will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and the public health and safety. This finding is supported by findings 17 through 46, below, which are based on the criteria specified in 10 V.S.A. §§ 6086(a)(1) through (8), (8)(A) and (9)(K).

17. The proposed project will have no adverse effect on public safety. All construction will be in accordance with the requirements of the National Electrical Safety Code. Watts pf. At 2; Public Service Board Rule No. 3.500.

Outstanding Resource Waters

[10 V.S.A. § 1424a(d)]

18. The proposed project is not located on or near any Outstanding Resource Waters. Upton pf. at 11.

Water and Air Pollution

[10 V.S.A. § 6086(a)(1)]

19. The project as proposed will not result in undue water or air pollution. This finding is supported by findings 20-29, below.

20. The proposed project will not result in unreasonable air pollution because there will be no emissions from the proposed project. If any clearing is necessary, vegetative materials will be chipped and mulched or disposed of at an approved off site location. No burning will be required for this proposed project. Upton pf. at 4.

Headwaters

[10 V.S.A. § 6086(a)(1)(A)]

21. The proposed project is not located in a headwaters area. Upton pf. at 4.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

22. The proposed project does not involve disposal of wastes or injection of any material into ground water or wells. Upton pf. at 4.

23. Any construction debris will be disposed of at an approved landfill. Upton pf. at 5.

24. An oil containment system will be installed at the proposed substation to collect any release of oil from the transformer or the regulators in the event of a leak. The proposed containment system will include a concrete storage tank of sufficient volume to contain all of the transformer and regulator oil. Upton pf. at 4; Crocket pf. at 3-4; exhs. DC-1 and DC-2.

Water Conservation

[10 V.S.A. § 6086(a)(1)(C)]

25. The proposed project will not require the use of water. Upton pf. at 5.

Floodways

[10 V.S.A. § 6086(a)(1)(D)]

26. No construction will take place in a floodway. Upton pf. at page 5.

Streams

[10 V.S.A. § 6086(a)(1)(E)]

27. There are no streams associated with the proposed transmission line. There is a drainage swale just north of the proposed substation site that eventually enters a Class 3 wetland west of the Agri-Mark manufacturing facility. Agri-Mark will install erosion control devices across this swale before beginning the proposed substation construction, will maintain them throughout construction, and will remove them after the subject area is successfully revegetated. There is a wooded bank located above and to the east of the Class 3 wetlands. The proposed substation will be located 25 feet beyond the top of this bank. The existing trees along the top of the bank will be retained for visual screening and soil stabilization. Upton pf. at 5; exh. DC-4.

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

28. The proposed project is not located on a shoreline. Upton pf. at 5-6.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

29. There are no Class 1 or 2 wetlands in the proposed project area. The Vermont Wetlands Office has reviewed the proposed project and determined that the project as proposed will adequately protect the nearby Class 3 wetland, which is located 33 feet from the closest construction. Upton pf. at 6.

**Sufficiency of Water And Burden on
Existing Water Supply**

[10 V.S.A. § 6086(a)(2)(3)]

30. The proposed project will not require the use of water and will not place a burden on any existing water supply. Upton pf. at 4-6.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

31. Earth disturbance will be limited to the immediate areas of the proposed new pole locations and the proposed substation. With the installation and maintenance of erosion control devices between the proposed substation and a nearby drainage swale, the proposed construction will not result in unreasonable soil erosion or reduction in the ability of the land to hold water. To the extent that erosion control devices are used within the drainage swale, stone check dams shall be used. Upton pf. at 6; ANR letter dated April 18, 2003.

Traffic

[10 V.S.A. § 6086(a)(5)]

32. The proposed project will not have any effect on traffic. Upton pf. at 6-7.

Educational Services

[10 V.S.A. § 6086(a)(6)]

33. The proposed project will have no impact on educational services. Upton pf. at 7.

Municipal Services

[10 V.S.A. § 6086(a)(7)]

34. The proposed project will not require any additional municipal or governmental services. Upton pf. at 7.

**Aesthetics, Historic Sites or Rare
And Irreplaceable Natural Areas**

[10 V.S.A. § 6086(a)(8)]

35. The project as proposed will not have an undue adverse effect on the scenic or natural beauty, aesthetics, historic sites or rare and irreplaceable natural areas. This finding is supported by findings 36 through 43, below.

36. The proposed CVPS project involves construction of approximately 2,000 feet of new transmission lines. Upton pf. at 1.

37. The proposed project will add a transmission circuit to an existing distribution line, and a small substation adjacent to an existing manufacturing facility. Poles will change in construction type and will increase in height (45-foot poles will be replaced by 60- and 65-foot poles). The proposed line, from its connection to the existing 46 kV transmission line, will follow an existing distribution corridor on the east side of Exchange Street for approximately 1600 feet northward, where it will diagonally cross the street to one pole, then immediately enter the Agri-mark property. The proposed line will then turn to the west and run approximately 575 feet to the back of the Agri-Mark manufacturing plant, where it will enter the proposed substation from the south. Upton pf. at 8-9; Upton suppl. pf. at 1-2.

38. Existing views from Exchange Street already include utility lines and numerous commercial and industrial facilities. Upton pf. at 8.

39. The proposed substation will be quite small in scale relative to the existing industrial buildings on the Agri-Mark site, and will be screened from neighboring properties by existing trees to the west and south. Exhs. DC-4 and DC-5; Upton pf. at 8.

40. The Middlebury 2000 Town Plan has set aside the subject industrial park area for the types of manufacturing uses that have unusual infrastructure needs, including special electric power needs. A 46 kV transmission line traverses the subject industrial park to the south, and its proposed extension to serve the large Agri-Mark manufacturing plant is in keeping with local planning efforts. Upton pf. at 9-10.

41. The proposed project will fit within the context of the area in which it is proposed. Upton pf. at 7-10.

42. There are no known rare or irreplaceable natural areas in the proposed project area. Upton pf. at 10; exh. TOU-1.

43. There are no known historic sites in the proposed project area. The only likely site of archeological deposits is the Otter Creek, which is approximately 1500 feet from the proposed project. Upton pf. at 10-11.

Discussion

Based on the above findings, the Board finds that this proposed project will not have an undue adverse effect on the aesthetics or scenic and natural beauty of the area. In reaching this conclusion, the Board has relied on the Environmental Board's methodology for determination of "undue" adverse effects on aesthetics and scenic and natural beauty as outlined in the so-called Quechee Lakes decision. Quechee Lakes Corporation, #3W0411-EB and 3W0439-EB (January 1986).

As required by this decision, it is first appropriate to determine if the impact of the proposed project will be adverse. The proposed project would have an adverse impact on the aesthetics of the area if its design were out of context or not in harmony with the area in which it is located. If it is found that the impact would be adverse, it is then necessary to determine whether such an impact would be "undue." Such a finding would be required if the proposed project: (1) violated a clear written community standard intended to preserve the aesthetics or scenic beauty of the area; (2) if it would offend the sensibilities of the average person; or if (3) generally available mitigating steps were not taken to improve the harmony of the proposed project with its surroundings. The Board's assessment of whether a particular project will have an "undue" adverse effect based on these three standards will be significantly informed by the overall societal benefits of the project.¹

The proposed project will not have an adverse effect on the aesthetics of the area. The placement of a new transmission line within the existing distribution corridor will fit the context of the area, which is comprised of an industrial park. The proposed new substation will be

1. The Board will consider, for example, the possible reduction in the need for a power plant, transmission investments, or other social costs.

immediately adjacent to an existing manufacturing facility within an existing industrial park. The town has set aside the land on Exchange Street for use by large industries that may have unusually high demands for electric power, such as Agri-Mark. The proposed project does not violate a clear, written community standard, is not shocking or offensive, and is based on a design that makes use of reasonably available mitigation steps. The Middlebury Town Plan foresees further development of the existing industrial park, and local views will include additional industrial development and infrastructure. Where land has been specifically set aside for service by industrial infrastructure, projects of this type are to be expected. CVPS proposes to make use of an existing distribution corridor, and has designed the proposed pole structures to carry transmission, distribution, and communications facilities together where possible.

Necessary Wildlife Habitat and

Endangered Species

[10 V.S.A. § 6086(a)(8)(A)]

44. The proposed project will not impact any designated natural areas or known endangered species sites, as there are none within the proposed project area. Upton pf. at 11; exh. TOU-1.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

45. The proposed facilities will not unnecessarily or unreasonably endanger the public or quasi-public investments in any governmental public utility facilities, services, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to such facilities, services, or lands. Upton pf. at 11.

46. Public investments that are directly adjacent to the proposed project include Exchange Street plus public water and sewer lines. The proposed project will not affect their function, use or access by the public. Upton pf. at 11.

Consistency with Resource Selection**Integrated Resource Selection**

[30 V.S.A. § 248(b)(6)]

47. The proposed project is consistent with the principals for resource selection in accordance with CVPS' approved least-cost integrated plan. The proposed project will allow for more effective and cost-efficient delivery of service from existing sources. Crocket pf. at 2; Watts pf. at 2.

Compliance With Electric Energy Plan

[30 V.S.A. § 248(b)(7)]

48. The project as proposed is consistent with the Vermont 20-Year Electric Plan. Watts pf. at 2. The DPS has determined, in a letter dated April 8, 2003, that the proposed project is consistent with the Vermont 20-Year Electric Plan in accordance with 30 V.S.A. § 202(f), provided that the actions of CVPS in this matter are consistent with the petition and testimony. DPS Section 202(f) Determination.

Outstanding Water Resources

[30 V.S.A. § 248(b)(8)]

49. No designated Outstanding Resource Waters will be affected by the proposed project. Upton pf. at 11.

Existing Transmission Facilities

[30 V.S.A. § 248(b)(10)]

50. The proposed project can be served economically by existing transmission facilities without undue adverse effect on Vermont utilities or customers. Watts pf. at 2.

III. CONCLUSION

Based upon all of the above evidence, the proposed construction will be of limited size and scope; the petition does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248; the public interest is satisfied by the procedures authorized in 30 V.S.A. § 248(j); and the proposed project will promote the general good of the state.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the construction by Agri-Mark of a 46 kV/12.5 kV substation and the construction by CVPS of approximately 2000 feet of 46 kV transmission line to provide service to the Agri-Mark substation, all located in the town of Middlebury, Vermont, will promote the general good of the State of Vermont in accordance with 30 V.S.A. § 248, and a certificate of public good shall be issued in this matter.

Dated at Montpelier, Vermont, this 29th day of May, 2003.

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| <u>s/Michael H. Dworkin</u> |) | |
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| <u>s/David C. Coen</u> |) | PUBLIC SERVICE |
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| |) | BOARD |
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| |) | |
| <u>s/John D. Burke</u> |) | OF VERMONT |

OFFICE OF THE CLERK

FILED: May 29, 2003

ATTEST: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.